

1 James R. Condo (#005867)
 2 SNELL & WILMER L.L.P.
 3 One Arizona Center
 4 400 E. Van Buren, Suite 1900
 5 Phoenix, Arizona 85004-2202
 Telephone: 602.382.6000
 Facsimile: 602.382.6070
 jcondo@swlaw.com

6 Richard B. North, Jr. (admitted *pro hac vice*)
 Georgia Bar No. 545599
 7 Matthew B. Lerner (admitted *pro hac vice*)
 Georgia Bar No. 446986
 8 NELSON MULLINS RILEY & SCARBOROUGH LLP
 201 17th Street, NW / Suite 1700
 9 Atlanta, GA 30363
 Telephone: (404) 322-6000
 Telephone: (404) 322-6050
 richard.north@nelsonmullins.com
 matthew.lerner@nelsonmullins.com
 12 *Attorneys for Defendants*
C. R. Bard, Inc. and
Bard Peripheral Vascular, Inc.

14 **IN THE UNITED STATES DISTRICT COURT**
 15 **FOR THE DISTRICT OF ARIZONA**

16 IN RE: Bard IVC Filters Products
 17 Liability Litigation

No. 2:15-MD-02641-DGC

18 **DEFENDANTS C. R. BARD, INC. AND**
BARD PERIPHERAL VASCULAR,
INC.'S RESPONSE REGARDING
BCM'S MOTION AND
MEMORANDUM IN SUPPORT TO
FILE DECLARATION AND EXHIBITS
UNDER SEAL

21 (Assigned to the Honorable David G.
 Campbell)

24 The Law Offices of Ben C. Martin and Martin/Baughman ("BCM") have filed a
 25 motion (Doc. 22164) asking this Court to stay distribution of certain assessments to the
 26 common benefit fund established in this multidistrict litigation proceeding ("MDL"),
 27 pending their appeal of this Court's May 20, 2022 order (Doc. 22162). That order denied
 28 BCM's motion to reduce and/or eliminate their obligation to pay assessments to the

1 common benefit fund. In support of the motion to stay, BCM has filed a declaration of
2 Mr. Martin, accompanied by exhibits, and a motion to seal the declaration (including
3 attachments. (Doc. 22165). As noted in previous filings, the Defendants C. R. Bard, Inc.
4 and Bard Peripheral Vascular, Inc. (collectively “Bard”) do not have a direct stake in this
5 apparent dispute between Mr. Martin’s firms and the Plaintiffs’ Executive Committee in
6 this MDL. However, some aspects of the motion to stay and related motion to seal do in
7 fact impact Bard. Bard is therefore filing this short brief to highlight its concern.

8 Although Bard has not seen the actual declaration and its attachments, BCM’s
9 motions indicate that the documents identify 304 clients of BCM ***and their allocated***
10 ***settlement amounts.*** (Doc. 22164 at p. 4; Doc. 22165 at p. 1). If that description is
11 accurate, the disclosure of that information, even in a sealed filing, violates the Master
12 Settlement Agreement between BCM and Bard. That agreement prohibits the parties
13 from revealing the settlement amounts to be paid to the claimants, except under very
14 specific and limited circumstances (none of which apply here). BCM acknowledges that
15 fact, noting that “the Declaration itself contains settlement amounts which are confidential
16 per the settlement agreement.” (Doc. 22165 at p. 1).

17 BCM’s filing of the Declaration containing that confidential information is a clear
18 violation of the firms’ obligations under the settlement agreement. Bard strongly objects
19 to BCM’s disregard of their obligations, and will address BCM’s breach of the agreement
20 directly with those firms. In the meantime, Bard respectfully urges this Court to ensure
21 that the settlement amounts remain confidential. The confidentiality provisions in the
22 agreements are vital components of the settlements. Bard could not have effectively
23 settled thousands of cases in the mass tort context if the value of individual settlements
24 was public knowledge. Hence, Bard respectfully asks this Court to mitigate the harm
25 caused by BCM’s violation of the agreement, and grant the motion to seal.

26
27
28

1 DATED this 14th day of June, 2022.

2 s/ Richard B. North, Jr.

3 Richard B. North, Jr.

4 Georgia Bar No. 545599

5 Matthew B. Lerner

6 Georgia Bar No. 446986

7 NELSON MULLINS RILEY & SCARBOROUGH, LLP

8 Atlantic Station

9 201 17th Street, NW / Suite 1700

10 Atlanta, GA 30363

11 PH: (404) 322-6000

12 FX: (404) 322-6050

13 richard.north@nelsonmullins.com

14 matthew.lerner@nelsonmullins.com

15 James R. Condo (#005867)

16 SNELL & WILMER L.L.P.

17 One Arizona Center

18 400 E. Van Buren

19 Phoenix, AZ 85004-2204

20 PH: (602) 382-6000

21 JCondo@swlaw.com

22 **Attorneys for Defendants C. R. Bard, Inc. and**
Bard Peripheral Vascular, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2022, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to all attorneys of record.

s/ Richard B. North, Jr.
Richard B. North, Jr.